

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	No. 16-1869
	:	
Petitioner	:	Board Case Nos.:
	:	25-CA-124973
v.	:	25-CA-124996
	:	25-CA-129941
COMMERCIAL TRADE SOURCE, INC.	:	25-CA-156165
	:	25-CA-156202
Respondent	:	25-CA-156208

REPLY OF THE NATIONAL LABOR RELATIONS BOARD
TO RESPONDENT'S OPPOSITION TO THE BOARD'S
SUBMITTED PROPOSED JUDGMENT

To the Honorable, the Judges of the United States
Court of Appeals for the Seventh Circuit:

The National Labor Relations Board (“the Board”) files this response to Commercial Trade Source, Inc.’s opposition to the language of the proposed judgment that the Board submitted with its application for entry of a judgment enforcing the Board’s order. Respondent does not dispute the Board’s entitlement to court entry of a judgment enforcing the Board’s order. Instead, Respondent opposes the form of the Board’s proposed judgment. For the following reasons, the Board submits that Respondent has presented no valid objections to the Board’s proposed judgment as presented to the Court. Accordingly, the Board’s proposed judgment should be entered as submitted by the Board.

1. Respondent opens its opposition by stating, “The proposed judgment is

misleading in that it does not reflect that it is the result of a Formal Settlement Stipulation.” The formal settlement stipulation was voluntarily entered into by all parties to the dispute; the Board, the Union and the Respondent. Respondent’s agreement was evidenced by the signature of its representative on February 5, 2016. *See* Certified Record, Formal Settlement, page 7. On page 7, under paragraph “VII Enforcement of Order” the agreement states, “The United States Court of Appeals for any appropriate circuit may, on application by the Board, enter its judgment enforcing the Order of the Board *in the form set forth above*. “ (emphasis added). The Order and Appendix attached to the Board’s proposed judgment do not vary from those terms provided in the stipulation.

2. Respondent next asserts: “The proposed judgment additionally contains repetitious and unnecessary language that goes beyond the typical U.S. Court of Appeals enforcement of a Board order, including improperly attaching materials to the proposed judgment.” The attachment of the Board’s order is also entirely appropriate and is contemplated in the settlement agreement as evidenced by the words, “enforcing the Order of the Board in the form set forth above.”

3. Respondent also asserts that the “judgment need only indicate that the Court grants the Board’s application for enforcement.” Respondent’s suggestion ignores the settlement agreement whose terms reflect the fact that the Board’s order and appendix are public documents which are being enforced for the benefit

of public parties, some of whose rights are being affected by enforcement of the order. These parties should not have to research the Court's order in order to determine what is being enforced. Additionally, for purposes of judicial efficiency, attachment of the Board's order and appendix lends clarity and helps avoid uncertainty and further litigation.

4. Respondent closes its opposition by stating "even if the language of the proposed judgment could be considered proper, any express direction to comply should account for the measures Respondent has already taken to comply with the Board's order." Respondent does not allege that it has fully complied with the Board's order. In any event, it is well settled by decisions of the Supreme Court and other courts that even full compliance with the terms of a Board order is no barrier to enforcement of the order by a court. *NLRB v. Mexia Textile Mills, Inc.*, 339 U.S. 564, 567-568 (1950). *See NLRB v. National Car Rental System, Inc.*, 672 F.2d 1182, 1191 (3d Cir. 1982). *See also NLRB v. Edgar Spring, Inc.*, 800 F.2d 595, 598 (6th Cir. 1986).

After enforcement of the Board's order, compliance issues may be put before the Board pursuant to the Board's rules and regulations. *See* Rules and Regulations at 29 C.F.R. §§ 102.52. This bifurcated procedure has met with the approval of the Courts. *See Sure-Tan v. NLRB*, 467 U.S. 883, 902 (1984); *N.L.R.B. v. Katz's Delicatessen of Houston Street, Inc.*, 80 F.3d 755, 771 (2d Cir. 1996)

(“Compliance determinations are routinely made ‘after entry of a Board order directing remedial action, or the entry of a court judgment enforcing such [an] order.’”). In a subsequent compliance proceeding, Respondent may demonstrate the measures it has already completed in its efforts to comply with the Board’s order.

WHEREFORE, the Board respectfully requests that the Court enter the proposed judgment that the Board submitted with the application for enforcement of an order of the National Labor Relations Board upon stipulation of the parties for entry of a consent judgment.

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

Dated in Washington, D.C.
this 14th day of June, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on the parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not by serving a true and correct copy at the address listed below:

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/s/ Linda Dreeben

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Dated in Washington, D.C.
this 14th day of June, 2016